

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

VOLUME SERVICES OF AMERICA d/b/a
CENTERPLATE MANAGEMENT, INC.

Employer¹

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 30, AFL-CIO

Petitioner

Case No. 34-RC-2086

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record² in this proceeding, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; the labor organization involved claims to represent certain employees of the Employer; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

The Employer is a management company that manages the Arena at Harbor Yard (herein called the Arena) pursuant to a contract with the City of Bridgeport, Connecticut. The Arena is an entertainment facility with 10,000 seats, and is primarily used on a seasonal basis for hockey and basketball. The Petitioner seeks to represent

¹ The Employer's name appears as corrected at the hearing.

² Pursuant to the Employer's unopposed request, the hearing transcript is corrected by substituting the name "Mr. Morelli" for "Mr. O'Donnell" in the following locations: page 9, lines 17, 19, 21, and 23, and page 10, lines 3, 6, and 9.

a unit of skilled and unskilled maintenance employees, including the HVAC technician, changeover employees, and cleaners, employed by the Employer at the Arena. Although otherwise in accord as to the scope and composition of the unit, the Employer, contrary the Petitioner, would exclude the HVAC technician as lacking a sufficient community of interest with the remaining petitioned-for employees. For the reasons described below, I find no merit to the Employer's contention, and I shall include the HVAC technician in the petitioned-for unit.

1. Overview of Operations

All of the petitioned-for employees are in the Employer's Operations Department. Primarily responsible for the Operations Department is a Director of Operations and two assistant operations managers, Michael Paz and Cliff Lydiksen. The cleaners and changeover employees report directly to Lydikson. The HVAC technician reports directly to Paz.

As noted above, the Arena operates on a seasonal basis. As a result, the cleaners and changeover employees work for the Employer during the fall, winter and spring, although several employees in each category perform some work on an on-call basis during the summer months.³ The cleaners and changeover employees are laid off at the end of each season, and are then offered employment shortly before the beginning of the new season. The Employer holds a job fair to find additional employees to replace those cleaners and changeover employees who choose not return for the new season. In contrast, the HVAC technician works throughout the year. However, during the summer months he works on an on-call basis for a limited number of hours to perform routine maintenance and emergency repairs related to the HVAC system.

The Employer also employs "stagehands" who are covered by a collective bargaining agreement with IATSE Local 109. The only other employees employed by the Employer at the Arena are office clerical employees, a receptionist, and "event staff" employees, which includes box office tellers and ticket takers.

³ There is one cleaner who works for the Employer on a year-round basis cleaning the Arena offices. The parties stipulated that this cleaner should be included in the petitioned-for unit.

2. Cleaners and Changeover Employees

Cleaners are responsible for cleaning the restrooms, concourses, concession stands, and seating areas before, during, and after an event. They report to work approximately one hour before the event and complete their work approximately one to two hours after the event. Changeover employees are responsible for converting the Arena from one event configuration to another. In most cases, this consists of converting between hockey and basketball. Most changeover employees report to work toward the end of an event, unless the event involves the set up of chairs, in which case a few will report prior to the event. In addition, several changeover employees are responsible for scraping the ice and performing minor repairs during hockey games. All changeover employees work for approximately 8 to 10 hours following the event to complete any required conversion. Changeover employees may also perform minor repairs to windows, seats, and doors. During the season, the cleaners and changeover employees work approximately 40 hours per week. There are no licensing requirements for cleaners or changeover employees.

3. HVAC Technician

HVAC Technician Michael Marvel is generally responsible for the maintenance and repair of the Arena's HVAC system. Although Marvel is licensed as a "heating, piping & cooling limited journey person", and also holds several other technical licenses, there is no evidence that such licenses are required for his position. He works during all events, maintaining the appropriate temperature levels and performing any necessary HVAC repairs. During hockey games, he insures that the ice remains frozen. Although the record does not reflect when he arrives for an event, it does reflect that he leaves the Arena at the conclusion of the event. Marvel may also perform maintenance work unrelated to the HVAC system.

The record reflects that Marvel was initially hired in February 2003 on a full-time basis, working approximately 40 hours per week. As a full time employee, Marvel was responsible for all HVAC maintenance and repairs. He also was assigned an office where the computer was located that automatically regulated the Arena's HVAC system. He also oversaw the HVAC budget, ordered supplies, and dealt with HVAC

vendors and suppliers. During the time that he was a full-time employee, Marvel received an array of benefits, including medical, dental, vision, short term disability, a 401(k) plan, and paid vacation and sick leave. In January 2004, Marvel was reduced to a part-time schedule, apparently because he secured another job. As a result, he is no longer assigned an office and a computer at the Arena, and his duties involving the HVAC budget, ordering supplies, and dealing with HVAC vendors and suppliers are now performed by Assistant Operations Manager Paz. Although his pay rate remained the same, he no longer receives any of the benefits described above. From January through the end of the season, Marvel worked approximately 20-25 hours per week. Since the end of the season, Marvel has worked approximately 10 hours per week on an on-call basis. In this regard, Marvel changes the filters once per calendar quarter, and is contacted by the Employer to perform any emergency maintenance or repairs to the HVAC system. If Marvel is not available, the Employer out sources the work. Although the Employer has been “looking” for a “licensed” full-time HVAC technician since January 2004, there is no evidence that the Employer intends to dispense with Marvel’s services in the event that it hires a full-time HVAC technician.

4. Terms and Conditions of Employment

Cleaners and changeover employees are paid \$8.00 per hour to start, with no benefits. Upon their return for another season, they receive a \$.25 per hour raise. However, the maximum cleaner pay rate is \$9.00 per hour, and the maximum changeover pay rate is \$10.00 per hour. Marvel is paid \$18.00 per hour with no benefits. They all punch a time clock and are paid on Wednesdays. They all have access to an “employee room” where they may store personal items, such as coats, during an event. With regard to uniforms, cleaners who work during an event wear a smock, jacket or shirt with the Arena logo. Although neither the changeover employees nor Marvel are required to wear any clothing item bearing the Arena logo, they are provided with such items if they wish to wear them.

Neither the changeover employees nor the cleaners routinely assist Marvel in performing HVAC work. However, the record reflects that at least one changeover employee during the past season assisted Marvel on two occasions in performing

HVAC maintenance work. There is no dispute that Marvel comes into contact with the cleaners and changeover employees in the course of their work. However, there is no evidence as to the nature or extent of such contacts.

5. Analysis and Conclusion

Based upon the foregoing and the record as a whole, I find that HVAC Technician Marvel shares a sufficient community of interest with cleaners and changeover employees to warrant his inclusion in the petitioned-for unit. More particularly, I note that Marvel and the other employees in the petitioned-for unit are subject to the same ultimate supervision, punch the same time clock, share the same employee facilities, work in the same general areas during similar periods of time performing maintenance functions, are subject to the same working conditions and fringe benefits, and have regular contact with each other in the course of their work. See *Tuskegee Institute*, 209 NLRB 773 (1974). Although Marvel's duties and responsibilities are far more specialized and technical in nature than the cleaners and changeover employees, for which he is paid a significantly higher pay rate, I note that his exclusion from the petitioned-for unit could leave him unrepresented. See *Victor Industries Corp.*, 215 NLRB 48 (1974); *Felix Half & Brothers, Inc.*, 132 NLRB 1523, 1524 (1961). In this regard, I note that he shares a far greater community of interest with the employees in the petitioned-for unit than he does with the remaining unrepresented event staff employees, receptionist, and office clerical employees employed by the Employer at the Arena. Accordingly, I shall include the HVAC technician in the petitioned-for unit.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time skilled and unskilled maintenance employees, including the HVAC technician, changeover employees, and cleaners employed by the Employer at the Arena at Harbor Yard, 600 Main St., Bridgeport, Connecticut; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION⁴

An election by secret ballot shall be conducted among the employees in the unit found appropriate herein at the time and place set forth in the notices of election to be issued subsequently.

Eligible to vote: those employees in the unit who were employed during the payroll period ending immediately preceding the date of the notice of election,⁵ including employees who did not work during that period because they were in the military services of the United States, ill, on vacation, or temporarily laid off; and employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements.

Ineligible to vote: employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the strike's commencement and who have not been rehired or reinstated before the election date; and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

The eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Operating Engineers, Local 30, AFL-CIO.

⁴ The Employer moved to dismiss the petition on the grounds that the unit originally sought by the Petitioner has been considerably expanded, requiring a new showing of interest. In support of its motion, the Employer argues that the original petition only sought the four employees who were working at the Arena at the time, but that the petition as amended at the hearing now encompasses approximately 60 seasonal employees. It is well established that the showing of interest is an administrative matter that is not subject to direct or collateral attack. *O.D. Jennings and Co.*, 68 NLRB 516, 518 (1946). It is also well established that in cases involving seasonal industries, the Board requires a showing of interest only among those employees employed in the unit as of the time the petition is filed. *Bogus Basin Recreation Association*, 212 NLRB 833, 834 (1974), and cases cited therein. Accordingly, I am administratively satisfied that the Petitioner has satisfied its showing of interest. Therefore, the Employer's motion to dismiss the petition is denied.

⁵ In accordance with the Board's usual practice in seasonal operations, the election will be held "at or about the approximate seasonal peak", on a date to be determined by the undersigned. *Kelly Brothers Nurseries, Inc.*, 140 NLRB 82, 86 (1962).

To ensure that all potentially eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned an initial eligibility list containing the *full* names and addresses of all potentially eligible voters.⁶ *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the lists available to all parties to the election. In order to be timely filed, the initial list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before, July 27, 2004. No extension of time to file the lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

[Right to Request Review](#)

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by July August 3, 2004.

Dated at Hartford, Connecticut this 20th day of July, 2004.

/s/ Peter B. Hoffman
Peter B. Hoffman, Regional Director
Region 34
National Labor Relations Board
Hartford, Connecticut

⁶ Because the election will not be held until the seasonal peak, the initial eligibility list should include all unit employees who were employed during the previous season. In this regard, I note the undisputed record evidence that the Employer will offer employment to all of these employees, and that it will only hire additional employees if necessary to complete its complement of employees for the new season. Within seven (7) days of the date of the Notice of Election, the Employer shall file with the Regional office an amended eligibility list containing the *full* names and addresses of all eligible voters. *Bogus Basin Recreation Association*, *supra*, at fn. 6.